

1 **CONTRACT FOR CITY SERVICES AND PROGRAMS FOR**
2 **THE DOWNTOWN DURHAM MUNICIPAL SERVICE**
3 **DISTRICT – FY-2016**
4
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6 By and Between
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9 THE CITY OF DURHAM, NORTH CAROLINA
10

11 and
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14 DOWNTOWN DURHAM, INC.
15
16

17 This Contract (the "Contract") is dated, made, and entered into as of the ____
18 day of _____, 20____, between the CITY OF DURHAM ("City") and ____
19 DOWNTOWN DURHAM, INC. ("DDI" or "Contractor"), a 501(c) (6) non-profit corporation
20 organized and existing under the laws of North Carolina, having its principal place of
21 business at 115 Market Street, Suite 213, Durham, NC 27701.
22

23 WITNESSETH:
24

25 **WHEREAS**, the North Carolina General Assembly enacted "The Municipal
26 Service District Act of 1973," (the "Act") pursuant to Article V, Sec. 2(4) of the
27 Constitution of North Carolina; and,
28

29 **WHEREAS**, the Durham City Council established a Municipal Service District
30 pursuant to the Act on May 2, 2011 by adoption and approval of Resolution No. 9761,
31 titled "Resolution Establishing a Business Improvement District in Downtown Durham,
32 North Carolina" (the "BID Resolution"); and,
33

34 **WHEREAS**, the BID Resolution established a Municipal Service District (also
35 referred to as a Business Improvement District ("BID")) located within the Downtown
36 Development Tier of the City of Durham specifically identified in the maps titled
37 "Downtown Improvement District" and prepared by Durham GIS dated April 28, 2011
38 and maintained by the Office of the City Clerk of Durham; and,
39

40 **WHEREAS**, under the authority of G.S. § 160A-536 (d), the City desires to enter
41 into this Contract with DDI to provide both basic city services and enhanced services
42 and programs within the BID.
43

44 NOW, THEREFORE, for and in consideration of the mutual terms and conditions
45 hereinafter contained, and other good valuable consideration, the Parties agree as
46 follows:
47

48 **1.0 PURPOSE AND ENGAGEMENT**

49 Pursuant to the BID Resolution the City finds a need for specialized services and
50 programs within the BID, which comprises the downtown area and has experienced a
51 marked increase in pedestrian intensity and activity due to various economic
52 development efforts. Multiple public and private amenities would benefit from the

specialized services and programs within the BID, which amenities include, but are not limited to, the Durham Performing Arts Center (DPAC), the Carolina Theater, the Durham Bulls Athletic Park, CCB Plaza, the Downtown Durham Marriott and Convention Center, West Village, American Tobacco Campus, Brightleaf Square, Golden Belt, Central Park and the numerous businesses and restaurants throughout the BID. The BID will receive an increase in street-level, appearance-related services, such as frequent sidewalk cleaning, and pressure-washing; street level hospitality services to direct people to key downtown sites and services while acting as safety eyes-and-ears within the BID District; increased directed marketing and promotion of downtown attractions within the BID; concentrated special event services; and concentrated economic development programs that build upon the momentum of existing development and leads to job creation, tax base growth and more downtown activity.

2.0 DEFINED TERMS

2.1 “BID” is the geographic area of the Municipal Service District (BID) located within the Downtown Development Tier of the City of Durham, specifically identified in the maps titled “Downtown Improvement District” and prepared by Durham GIS dated April 28, 2011 and maintained by the Office of the City Clerk of Durham.

2.2 “BID Resolution” is Resolution No. 9761, titled “Resolution Establishing a Business Improvement District in Downtown Durham, North Carolina” adopted and approved by the Durham City Council on May 2, 2011.

2.3 “BID Services” are all the services and programs that DDI is required to perform pursuant to this Contract within the BID, which services and programs are both (a) those cleaning and basic sanitation related city services set forth in subsection I of Exhibit A, and (b) those enhanced or additional city services and programs set forth in subsection II of Exhibit A.

2.4 “BID Services Budget” refers to the contracted budget amount allocated to the Contractor to perform the BID Services in accordance with this Contract pursuant to Section 6.0 below.

2.5 “Citizen Service Request” is a request to the Contractor from a citizen, whether directly or through the City (e.g., “Durham OneCall”), to perform a “clean and safe” service within the BID as set forth in subsection “I. Clean and Safe Services” of Exhibit A.

2.6 “City Funds” refers to all funds received by DDI under this Contract to perform the BID Services.

2.7 “Effective Date” is July 1, 2015. The Effective Date shall also be the trigger date for the duties and obligations of the Parties under this Contract.

2.8 “Generally Accepted Accounting Principles” or “GAAP” “Generally Accepted Accounting Principles” or “GAAP” shall mean those conventions, rules, procedures, and practices, consistently applied, affecting all aspects of recording and reporting financial transactions which are generally accepted by major independent accounting firms in the United States. Any financial or accounting terms not otherwise

limited or defined in this Contract shall be construed and applied according to Generally Accepted Accounting Principles.

2.9 “Implementing Department” shall be the City’s Office of Economic and Workforce Department (“OEWD”), the city department primarily responsible for the administration and oversight of this Contract.

2.10 “Including” The word “including” and any variants thereof, whether capitalized or not, shall mean “including, but not limited to” or otherwise imply that it is without limitation.

2.11 “Independent Accountant” is a firm of independent certified public accountants, or an independent certified public accountant, chosen by Contractor and subject to the approval of City which shall not be unreasonably withheld, delayed or conditioned.

2.12 “Legal Requirements” are all material laws, statutes, ordinances, rules, regulations, permits, licenses, and requirements of all governments or regulatory authorities, that now or hereafter may be applicable to the BID.

2.13 “Parties” means the parties to this Contract.

2.14 “Service Standards” are the performance standards of services and programs to be provided by DDI under this Contract, which service standards shall be conducted in a manner (i) consistent with the requirements and limitations set forth in this Contract; (ii) consistent with current prudent public services and management practices to promote general public safety and welfare; (iii) comparable to standards applicable to other BID areas found in other similarly situated downtown city settings; (iv) consistent with keeping the BID in a clean, sanitary and attractive condition, and (v) performed in compliance with Legal Requirements.

2.15 “Subcontractor” means a subcontractor that Contractor engages as a subcontractor for the performance of certain of the BID Services.

2.16 “Subcontract” means the contract that Contractor executes with a Subcontractor for the performance of certain of the BID Services.

3.0 TERM OF AGREEMENT.

The term of this Contract shall be 1 year (“Term”) according to the City’s fiscal calendar, beginning on July 1, 2015 to June 30, 2016.

4.0 SCOPE OF CONTRACT SERVICES TO BE PERFORMED.

The BID Services are listed and described in Exhibit A, titled “Scope of BID Services.” DDI affirmatively represents that it shall provide the BID Services set forth below during the subject fiscal year. By the end of the subject fiscal year DDI shall use the City Funds paid to it by the City pursuant to this Contract exclusively in the category of the BID Services described in this Section 4.0 and Section 6.0. Pursuant to Section 7.0, Contractor shall provide an accounting to the City of all unused City Funds within the BID Services categories prior to 30 days after the end of the Term. At the discretion of the City, any unused City Funds shall be returned to the City within 20 days of notice

by the City, unless such funds are incorporated into a subsequent BID services Contract with DDI.

5.0 CONDUCT OF CONTRACTOR

Contractor shall at all times perform the BID Services consistent with the Service Standards defined by this Contract.

5.1 Citizen Service Request Reporting. – Contractor shall respond to Citizen Service Requests as promptly as reasonably feasible during operational hours. Contractor shall maintain records of the description, date and time when the Citizen Service Request is first received and the date, time and description of resolution (if any) of the Citizen Service Request. Contractor shall maintain and record additional details of the Citizen Service Request as may be necessary for the City to evaluate the services performed. Contractor shall cooperate and consult with Durham One-Call and City administration to allow adequate routing and responses to Citizen Service Requests, which response time shall be as good, or better, than the City's historic response time. At the request of the City, the Contractor shall submit an accounting of Citizen Service Request information with its detailed quarterly report of program activities required under Section 7.0 below.

5.2 Security. – Contractor is not authorized to perform any security or law enforcement activities under this Contract. However, it is agreed that while performing the BID Services, Contractor's employees or subcontractor employees may observe suspicions or unsafe activities by others. Contractor shall coordinate with the City regarding appropriate protocol in addressing observed unsafe or potentially criminal activities within the BID. If required by the City, Contractor shall promptly report to the Durham Police Department any incidents involving what may appear to be suspicious, unsafe, or criminal activities. The Contractor shall make a report of all such activities that are reported to the Durham Police Department and include a summary of all such reports in the Contractor's quarterly reporting of program activities and accomplishments pursuant to Section 7.0. Contractor shall maintain a copy of each report and deliver the same to the City, upon request. This report shall be delivered to the Office of Economic and Workforce Development to the attention of the Director.

5.3 Private Property. Contractor is prohibited from performing any BID Services for the exclusive benefit of private properties or private entities. Contractor must abide by all Legal Requirements in performing any BID Services on or near private property.

6.0 PAYMENT AND USE OF CITY FUNDS

The City shall make payments to DDI as provided herein for each category of BID Services for the fiscal year according to the two (2) budget categories identified in Exhibit B, titled "BID Services Budget for FY-2016." The annual fiscal payment to Contractor for the BID Services is as follows:

<u>CATEGORY OF SERVICE</u>	<u>ESTIMATED ANNUAL BUDGET</u>
BID Services Budget	\$653,503**

** estimated

6.1 Estimated BID Services Budget. -- Contractor acknowledges that the “BID Services Budget” is only an estimate of the City Funds available for the Contract based upon the anticipated BID tax rate to be approved by the City Council on the Effective Date. Such BID Tax rate will determine the BID tax revenues collected from the additional taxes levied on property within the BID pursuant to the BID Resolution. In other words, the BID tax revenues cannot be reliably estimated, until after the Effective Date.

6.2 Amendment to BID Services Contract. The Parties agree to amend the Contract to address any substantive shortfall in the BID Services Budget, which amendment may also incorporate a reduction in BID Services. Notwithstanding the foregoing, the Contractor acknowledges and agrees that any shortfall in the estimated BID Services Budget of 5% or less shall not be considered substantive and shall not require any Contract amendment. The City Manager shall have the authority to make any amendments to this Contract as a result of a substantive shortfall in the BID Services Budget (as described above), or if the City decides to augment the BID Services provided by the Contractor as a result of BID tax revenues received in excess of BID tax revenues originally assumed in determining the expected BID Services Budget. The City will keep Contractor informed of BID tax revenues actually collected and if it appears that BID tax revenues collected during the Term will result in an overage, the City will meet with Contractor to discuss the impact of such overage on the Contract, if any.

6.3 Form of Invoices. -- Except for the initial invoice (described below), the Contractor shall send invoices to the City on a monthly basis equal to one-twelfth (1/12) of the BID Services Budget. In order for the Contractor to receive advance payments from the City for the BID Services to be rendered, the City must receive the appropriate invoice at least 20 days prior to commencement of the BID Services for the specified time period.

6.4 Payment of Undisputed Amounts. -- The City shall make payment on the invoices from the Contractor within 20 days from receipt of the invoice. The City shall not be obligated to pay Contractor any payments, fees, expenses, or compensation other than those authorized by this section. Such payment schedule may be amended by written consent of the City and Contractor. The City Manager and the Director of the Implementing Department (the “Director”) shall have authority to give that consent on behalf of the City. The City, in its sole discretion, and without affecting its other rights and remedies, may delay or cancel any or all of those payments for failure by Contractor to comply with any of the provisions of this Contract, including deadlines for submitting any accounting, audit, statement, information, record, documentation, or report. The City Manager or Director shall have the authority to decide whether Contractor has complied with this Contract, including the attachments. Unless the City otherwise specifies, if the withholding is designated to be a delay of payment instead of a cancellation of payment, the payment so delayed shall be made when Contractor has submitted the missing items, provided that such items are received by the City within 45 days after the date that they were due. If any of said missing items is not received by the City before the expiration of the additional 45-day period, then the amounts so withheld shall not be paid to Contractor unless the missing items are later received by the City before expiration of the current fiscal year. If the City does not delay or cancel in one instance, the City shall still have the right to delay or cancel after any other instance of failure by DDI.

6.5 Repayment of Funds. -- DDI shall repay to the City the full amount of any City Funds lost, misapplied, unaccounted for, not used (as provided in Sections 4.0 and 7.0), or inadequately accounted for in violation of this Contract.

7.0 REPORTING REQUIREMENTS

7.1 General Accounting DDI, at DDI's sole expense, shall account for all City Funds received from the City under this Contract and all expenditures made from City Funds according to each category of BID Services detailed under Exhibit A. DDI shall submit a detailed quarterly report of program activities and accomplishments associated with the expenditure of City Funds to the City's Office of Economic and Workforce Development (the "Implementing Department"). That report shall be submitted within 20 days after each quarter of the fiscal year in accordance to the reasonable requirements of the Implementing Department and shall include a detailed description of the services performed in accordance with the service categories referenced in Exhibit A. If necessary, the Department may require additional detailed information (in addition to the required report), including but not limited to accounts, records, budget-to-actual statements, and other supporting documentation. As part of the final quarterly report for the subject fiscal year, Contractor shall include an annual summary of the same information required as part of each quarterly report. If, as part of the final quarterly review, the City determines that the payment of City Funds exceeded the actual costs of BID Services provided, including a reasonable allocation of Contractor administrative costs, expenses, and overhead (including staff salaries and benefits), the City shall have the right to require Contractor to return the unused funds. Without limiting the preceding sentence, it is agreed that, if requested in writing by the City, Contractor shall make all of that information available for inspection and audit by the City at any time during the workday of the Implementing Department or such other department of the City that the City Manager specifies in writing to Contractor.

7.2 Annual Audit Report. -- Annually, DDI, at DDI's sole expense, shall obtain an audit of its financial statements. The audit shall be performed by an Independent Accountant. This audit shall be conducted in accordance with Generally Accepted Accounting Principles standards, and the financial statements shall be prepared in conformity with generally accepted accounting principles. DDI shall see that the City's Director of Audit Services receives the audit report within four months after the close of the City's fiscal year. If the independent annual audit shows a difference in the accounting of City Funds from the final quarterly report required under sub-section 7.1 above, the Parties agree to make the appropriate payment adjustment in accordance with the Contract consistent with the findings of the independent Audit.

8.0 CONTRACTOR REPRESENTATIONS AND WARRANTIES.

8.1 DDI Warranties and Representations. During the term of this Contract, DDI warrants, represents and covenants that all information provided or submitted to the City regarding the proposed use of all the City Funds being granted by the City to DDI pursuant to this Contract for described programs shall be accurate and true. DDI represents that it is an organization described by Section 501(c)(6) of the Internal Revenue Code and that it has provided the City with a valid, un-revoked letter from the Internal Revenue Service that it is such an organization.

8.2 No Liens or Encumbrances -- The execution, delivery and performance of this Contract by Contractor does not and will not, with or without the giving of notice or the lapse of time, or both, (i) result in any violation of its constitutional documents; (ii) result in a breach of, or conflict with, any of the terms or provisions of, or constitute a

default under, or result in the modification or termination of, or result in the creation or imposition of any encumbrance upon any of its properties or assets pursuant to any indenture, mortgage, note, contract, commitment or other contract or instrument to which it is a party; or (iii) violate any existing applicable law, rule, regulation, judgment, order or decree of any governmental agency or court, domestic or foreign, having jurisdiction over it or its assets.

9.0 CITY LOGOS AND BRANDING.

9.1 Use of City Logo or Brand -- Contractor shall include the City of Durham's name and/or logo in all communications with respect to BID Services provided, which communications are produced during the Term. The style of presentation (text and/or logo, font size, tec.) shall be determined by the Contractor. Provided, however, at a minimum the following statement (where applicable) shall be inserted: "Funding for this product/service has been provided by the City of Durham." It is generally expected that when another person or entity is identified in the communication as a sponsor, donor, or contributor with respect to the same BID Services, and that person's or entity's logo appears in the communication, the City's logo would also appear. When the style of presentation is based on the amount of financial support provided, the City's name and/or logo shall be treated equally with other supporters providing similar financial support, and shall be based on the total amount of City funds received and to be received pursuant to this Contract by the Contractor.

10.0 EXHIBITS

The following Exhibits are made a part of this Contract:

Exhibit A - "Scope of BID Services FY2016" containing 4 pages; and,
Exhibit B -- "BID Services Budget for FY2016 vs. FY2015" containing 1 page; and
Exhibit C -- "Map: City of Durham Downtown Business Improvement District

In case of conflict between an exhibit and the text of this Contract excluding the exhibit, the text of this Contract shall control.

11.0 TERMINATION PROVISIONS.

11.1 Termination for Convenience ("TFC") by City (a) Procedure. Without limiting any party's right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this Contract for convenience by giving the Contractor at least a 90-day advanced written notice that refers to this section ("TFC Notice"). TFC shall be effective at the time indicated in the notice but at least 90-days from the date of the receipt of the TFC Notice. (b) Obligations. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions shall remain in force. At the time of TFC Notice or as soon afterwards as is practical, the Contractor shall provide a final accounting and verification of all direct contractual costs and charges to be incurred by Contractor as a result of TFC, including any Subcontractor termination costs and charges. (c) Payment. Within 20 days after the TFC Notice date, the City shall pay the Contractor one hundred dollars as a TFC fee. Within 20 days after the TFC effective date, the City shall pay the Contractor for all BID Services performed except to the extent previously paid for. BID Services shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the BID Services been completed except to the extent it would be inequitable to either party. If the BID Services were to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that BID Service. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

11.2 Termination for Convenience by Contractor. (a) Procedure. Without limiting any party's right to terminate for breach, the parties agree that the Contractor may, without cause, and in its discretion, terminate this Contract for convenience by giving the City at least a 90-day advanced written notice that refers to this section ("TFC Notice"). TFC shall be effective at the time indicated in the notice but at least 90-days from the date of the receipt of the TFC Notice. (b) Obligations. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions shall remain in force. At the time of TFC Notice or as soon afterwards as is practical, the Contractor shall provide a final accounting and verification of all direct contractual costs and charges to be incurred by Contractor as a result of TFC, excluding any costs, expenses or charges that may be incurred beyond the effective date of the TFC (e.g., the City shall not pay Contractor for any costs, expenses or charges related to equipment amortization obligations to subcontractor(s)). (c) Payment. Within 20 days after the TFC Notice date, the Contractor shall pay the City one hundred dollars as a TFC fee. Within 20 days after the TFC effective date, the City shall pay the Contractor for all BID Services performed except to the extent previously paid for. BID Services shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the BID Services been completed except to the extent it would be inequitable to either party. If the BID Services were to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that BID Service. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

12.0 CONTRACTOR INSURANCE

Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following applicable coverage's and limits. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract.

Commercial General Liability – Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

Automobile Liability – Limits of no less than \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a City of Durham site.

Umbrella or Excess Liability – Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest 'Each Occurrence' limit for required

415 policies. Contractor agrees to endorse City of Durham as an 'Additional Insured' on the
416 Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or
417 Excess Liability provides coverage on a 'Follow-Form' basis.

418
419 **Worker's Compensation & Employers Liability** – Contractor agrees to maintain
420 Worker's Compensation Insurance in accordance with North Carolina General Statute
421 Chapter 97 and with Employer Liability limits of no less than \$1,000,000 each accident,
422 each employee and policy limit. This policy must include a Waiver of Subrogation.

423
424 **Professional Liability-** Contractor agrees to maintain Professional Liability Insurance
425 with limits no less than \$1,000,000, covering claims arising out of professional architect,
426 engineers and surveyors services performed in connection with this contract.

427
428 **Environmental/Pollution-** Contractor agrees to maintain Environmental/Pollution
429 Liability Insurance with limits no less than \$1,000,000 per occurrence and \$2,000,000
430 aggregate, covering claims arising out of the use or application of chemicals/herbicides
431 as well as the negligent release of hazardous materials. Coverage may also be satisfied
432 by endorsement to the Commercial General Liability policy with minimum limits of
433 \$1,000,000/\$2,000,000.

434
435 **Additional Insured** – Contractor agrees to endorse the City as an Additional Insured on
436 the Commercial General Liability. The Additional Insured shall read 'City of Durham as
437 its interest may appear'.

438
439 **Certificate of Insurance** – Contractor agrees to provide City of Durham a Certificate of
440 Insurance evidencing that all coverage's, limits and endorsements required herein are
441 maintained and in full force and effect, and Certificates of Insurance shall provide a
442 minimum thirty (30) day endeavor to notify, when available, by Contractor's insurer. If
443 Contractor receives a non-renewal or cancellation notice from an insurance carrier
444 affording coverage required herein, or receives notice that coverage no longer complies
445 with the insurance requirements herein, Contractor agrees to notify the City within five
446 (5) business days with a copy of the non-renewal or cancellation notice, or written
447 specifics as to which coverage is no longer in compliance. The Certificate Holder
448 address should read:

449
450 City of Durham
451 Attn: (Insert Name of Department maintaining the Contract)
452 101 City Hall Plaza
453 Durham, NC 27701

454
455 All insurance companies must be authorized to do business in North Carolina and be
456 acceptable to the City of Durham's Risk Manager.

457 458 459 **13.0 INDEMNIFICATION**

460 **13.1 Indemnification.** To the maximum extent allowed by law, DDI shall
461 defend, indemnify, and save harmless Indemnitees from and against all Charges that
462 arise in any manner from, in connection with, or out of this Contract as a result of acts or
463 omissions of DDI or subcontractors or anyone directly or indirectly employed by any of
464 them or anyone for whose acts any of them may be liable. In performing its duties under
465 this subsection "13.1," the Contractor shall at its sole expense defend Indemnitees with
466 legal counsel reasonably acceptable to City.

13.2 Definitions. As used in subsections “13.1” above and “13.3” below -- “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within “Charges” are (1) interest and reasonable attorneys’ fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this Contract). “Indemnitees” means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.

13.3 Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this Contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Contract.

13.4 Survival. This section shall remain in force despite termination of this Contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this Contract.

13.5 Limitations of the Contractor’s Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection “13.1” above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

13.6 Notice and Cooperation. Contractor shall notify the City promptly of any claim or complaint that may arise from Contractor’s obligations under this Contract. Contractor agrees to provide full and complete cooperation in addressing notices of potential claims or complaints against Contractor or the Indemnitees.

14.0 RELATIONSHIP OF THE PARTIES

It is the express intention of the Parties hereto that Contractor and its subcontractors is and shall be deemed an independent contractor under this Contract and that no partnership shall exist between the City and Contractor (including its subcontractors). Contractor shall have full discretion in determining the method for performing its duties and obligations under this Contract and shall be fully responsible for payment of any income taxes, Social Security taxes, unemployment compensations taxes, workers’ compensation insurance premiums and other taxes with respect to itself, its employees and its subcontractors. This Contract does not constitute Contractor as the agent, legal representative or employee of the City for any purpose whatsoever.

15.0 MISCELLANEOUS PROVISIONS

15.1 Livable Wage. (a) In the event of a finding by the City Manager of City or a judicial officer that any Service Worker has been paid less than the compensation to which the Service Worker is entitled under the City’s Livable Wage ordinance, the Contractor shall make restitution to the Service Worker for the amount due. The Contractor shall also pay liquidated damages to the City in the amount of Fifty Dollars

(\$50.00) per day for each employee so underpaid, provided, however, that these damages shall not be assessed for wage underpayment violations to any individual which amount to a total of less than One Dollar (\$1.00) in any payroll period. Should a Service Worker be found to have been discriminated against for seeking to enforce the provisions of the City's Livable Wage ordinance, and if the Service Worker has been terminated from employment, he or she shall be reinstated upon an order to do so from the City Manager or a judicial officer. A flyer stating the City of Durham's Livable Wage amount shall be posted at the workplace of the Contractor and all subcontractors in a location easily seen by all employees. The Contractor agrees to comply with applicable provisions of the ordinance, including but not limited to its severability provisions. Definitions of terms in this paragraph are stated in the ordinance. "Service Contractor" includes DDI and all of its subcontractors.

(b) The terms and provisions of Section 15 shall be null and void if the Durham Livable Wage ordinance is terminated or repealed and the obligations of DDI under the above section shall be modified if and to the extent that the Durham Livable Wage ordinance is modified.

15.2 Equal Opportunity/Equity Assurance. The provisions of this section 15.2 are intended to conform with the requirements of Article III of Chapter 18 of the Durham Code of Ordinances.

15.2.1 General Requirements.

(a) Contractor shall meet with the Director of the City's Department of Equal Opportunity/Equity Assurance (EO/EA) annually to discuss potential contracting opportunities for goods and services for small disadvantaged businesses certified by the City (SDBEs).

(b) The Director may set project specific goals as the Director determines to be generally applicable under Article III of Chapter 18 (as amended from time to time) in City contracting.

(c) In all solicitations for which goal(s) are established, Contractor will not enter into contracts for goods or services without first soliciting bids from SDBEs and requiring bidders to submit a Participation Plan to meet the goal(s). Bidders must state their SDBE participation in a manner like that required by bidders on contracts to be awarded by the City. If a bidder fails to achieve the goal(s), the bidder must submit documentation to Contractor of its good faith efforts to achieve the goal(s) within two working days after bid opening. Contractor shall take all reasonable actions needed to see that bidders comply with this subsection. Contractor shall make bids and documentation of good faith efforts available to the Director.

(d) Contractor will notify the Director of EO/EA of upcoming contracting opportunities to ascertain the availability of SDBEs that might be capable of supplying the pertinent goods or services. Each such notice shall be given in a manner and schedule so that the SDBEs will have a reasonable amount of time to respond.

(e) Contractor shall comply with all applicable provisions of Article III of Chapter 18. The failure of Contractor to comply with that chapter shall be a

material breach of contract which may result in the rescission or termination of this Contract and/or other appropriate remedies in accordance with the provisions of that chapter, this Contract, and State law. The Participation Plan submitted by Contractor in accordance with that chapter is binding on Contractor.

(f) Section 18-59(f) of Article III of Chapter 18 provides, in part, "If the City Manager determines that [Contractor] has failed to comply with the provisions of [this Contract], the City Manager shall notify [Contractor] in writing of the deficiencies. [Contractor] shall have 14 days, or such time as specified in [this Contract], to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to [Contractor's] alleged violations of its obligations under Article III of Chapter 18 and not to [Contractor's] alleged violations of other obligations.

15.2.2 Definitions. In this document, words, including "SDBE" and the "Director" shall have the meaning assigned in Article III of Chapter 18, unless the context requires otherwise. "Article III of Chapter 18" means Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance).

15.3 Non-Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

15.4 Severability. Any provision of this Contract that is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions of this Contract.

15.5 Notices. All notices and other communications required or permitted by this Contract, unless otherwise provided for in this Contract, shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:
City Manager
City of Durham
101 City Hall Plaza
Durham, NC 27701
Fax (919) 560-4949.

With a copy to:
Director of the Office of Economic and Workforce Development
City of Durham
101 City Hall Plaza
Durham, NC 27701
Fax (919) 560-4986

To the Contractor:
Downtown Durham, Inc.
Attn: President
115 Market Street, Suite 213
Durham, NC 27701

Fax (919) 682-1980

15.6 Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this Contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

15.7 Performance of Government Functions. Nothing contained in this Contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

15.8 Compliance with Law. In performing all of their respective obligations under this Contract, the Contractor and the City shall comply with all Legal Requirements.

15.9 City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

15.10 No Third Party Rights Created. This Contract is intended for the benefit of the City and Contractor and not any other person.

15.11 Modifications. Entire Contract. A modification of this Contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a deputy or assistant City Manager signs it for the City. This Contract contains the entire Contract between the parties pertaining to the subject matter of this Contract. With respect to that subject matter, there are no promises, contracts, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Contract.

15.12 Assignment. Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this Contract; provided, however, Contractor may subcontract certain clean and safe services to a Subcontractor. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contract and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this Contract and all of the City's claims that arise out of this Contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this Contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

15.13 City's Manager's Authority. To the extent, if any, the City has the power to suspend, terminate or amend this Contract or the Contractor's services under

this Contract, that power may be exercised by the City Manager without City Council action.

15.14 Principles of Interpretation. In this Contract, unless the context requires otherwise: The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and Contracts shall be deemed to include all amendments to them. The word "shall" is mandatory.

15.15 North Carolina Right to Work. The parties hereto agree and understand that the law in effect as of the date of this Contract provides that North Carolina is a right to work state and that the City is prohibited from collective bargaining. The parties agree that changes in those laws shall not affect the obligations of the parties to comply with this Contract.

15.16 Arm's Length Transaction. The Parties agree that this Contract is the result of arm's length negotiations, and that any ambiguity or uncertainty herein, if any, shall not be interpreted against either party.

15.17 Choice of Laws. The validity and construction of this Contract shall be determined in all respects in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, the City and the Contractor have caused this Contract to be executed under seal themselves or by their respective duly authorized agents or officers.

Preaudit Certification, if necessary

By the CITY OF DURHAM:

By: _____

*Contract for City Services and Programs for the Downtown Durham
Municipal Service District—FY-2016*

By DOWNTOWN DURHAM, INC.

By: _____(Seal)

Title of officer: _____

(Affix corporate seal.)

State of _____ ACKNOWLEDGMENT BY
DOWNTOWN DURHAM, INC.
County of _____

I, a notary public in and for the aforesaid county and state, certify that
_____ personally
appeared before me this day and stated that he or she is (strike through the
inapplicable:) chairperson/ president/ chief executive officer/ vice-president/ assistant
vice-president/ treasurer/ chief financial officer of DOWNTOWN DURHAM, INC., a
corporation, and that by authority duly given and as the act of the corporation, he or she
signed the foregoing Contract with the City of Durham and the corporate seal was
affixed thereto. This the _____ day of _____, 20_____.

Notary Public

My commission expires:
